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Attorneys for Defendant Capital One Bank (USA), N.A.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| ALTER ZELLERMAIER, | : |
| | : |
| Plaintiff, | : |
| | : |
| v. | : |
| | : |
| Capital One Bank USA, X, Y, Z Corporations, et al. | : |
| | : |
| Defendants. | : |
| | : |
| ----- | X |

Case No. 1:18-cv-2878
(Removed from the Supreme
Court of the State of New
York, County of Kings, Index
Number Not Assigned/2018)
**NOTICE OF REMOVAL BY
DEFENDANT CAPITAL ONE
BANK (USA), N.A.**

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, Defendant Capital One Bank (USA), N.A. (“Capital One”), sued herein as Capital One Bank USA, removes this action from the Supreme Court of the State of New York, County of Kings to the United States District Court for the Eastern District of New York. Removal is appropriate based on federal question jurisdiction and supplemental jurisdiction because Plaintiff Alter Zellermaier asserts a claim under the Fair Credit Reporting Act (the “FCRA”), and the remaining claims arise out of the same case or controversy. In support of this Notice, Capital One states the following:

I. Background

1. Plaintiff originally filed this case in the Supreme Court of the State of New York, County of Kings, on or about April 20, 2018, captioned *Alter Zellermaier v. Capital One Bank USA, X, Y, Z Corporations et al.*, Index Number not yet assigned/2018 (“Supreme Court Action”). In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on Capital One are attached as **Exhibit A**.

2. This action has not been previously removed to federal court.

3. The removal of this action to this Court is timely under 28 U.S.C. § 1446(b) because this Notice of Removal is being filed within thirty (30) days of process being served on Capital One. Plaintiff served Capital One on or about April 20, 2018, with a Summons, Complaint, and Notice of Electronic Filing. *See Exhibit A*.

4. A true and correct copy of the Affidavit of Service upon Capital One filed by Plaintiff in the Supreme Court Action is attached as **Exhibit B**. The Affidavit of Service states that Capital One was purportedly served on April 20, 2018.

5. Upon information and belief, the foregoing documents and exhibits constitute all of the process, pleadings, and orders on file in the Supreme Court Action

6. The United States District Court for the Eastern District of New York is the proper place to file this Notice of Removal under 28 U.S.C. § 1441(a) because it is the federal district court that embraces the place where the original action was filed.

7. In accordance with 28 U.S.C. § 1446(d), Capital One will give prompt written notice of this Notice of Removal to all parties and to the Clerk of the Supreme Court of the State of New York, County of Kings. A copy of the Notice of Filing of Notice of Removal to the Supreme Court of the State of New York, County of New York is attached hereto as **Exhibit C**.

8. As set forth below, this case is properly removed to this Court because this Court has original jurisdiction over this action under 28 U.S.C. §§ 1331 and 1367.

II. This Court Has Federal Question Jurisdiction

9. This Court has federal question jurisdiction because Plaintiff asserts claims that arise under federal law. *See* 28 U.S.C. § 1331 (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”).

10. Under 28 U.S.C. § 1441 (a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

11. Plaintiff’s Complaint alleges violation of the FCRA, asserting a cause of action under 15 U.S.C. §§ 1681 *et seq.* *See Exhibit A.* Accordingly, the Complaint presents a federal question within the meaning of 28 U.S.C. § 1331, because it involves claims and/or issues arising in whole or in part under the Constitution, laws, or treaties of the United States. Therefore, this Court has original jurisdiction over the Supreme Court Action.

12. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a).

III. This Court Has Supplemental Jurisdiction

13. This Court has supplemental jurisdiction over Plaintiff’s remaining state law claims because they are part of the same “case or controversy” as the federal law claim. *See* 28 U.S.C. § 1367.

IV. Conclusion

14. In filing this Notice of Removal, Capital One does not waive any defenses, either procedural or substantive, and specifically reserves all defenses, exceptions, rights, and motions.

No statement or omission in this Notice shall be deemed an admission of any allegations of or damages sought in the Complaint.

WHEREFORE, Capital One files this Notice of Removal and removes this civil action to the United States District Court for the Eastern District of New York. Capital One requests that the Court assume exclusive jurisdiction of this action and enter such orders as may be necessary to accomplish the requested removal and promote the ends of justice.

Dated: New York, New York
May 15, 2018

Respectfully Submitted,

McGUIREWOODS LLP

s/ Philip A. Goldstein

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